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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD MOORE,

Defendant and Appellant.

B305880

(Los Angeles County
Super. Ct. No. NA042691)

APPEAL from an order of the Superior Court of Los Angeles County, Jesse I. Rodriguez, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Richard Moore appeals from the postjudgment order denying his motion to vacate his sentence pursuant to Penal Code section 1016.8.¹ His appellate counsel has filed a brief asking this court to proceed under *People v. Serrano* (2012) 211 Cal.App.4th 496. We affirm the trial court's order.

BACKGROUND

In 2002, a jury convicted Moore of attempting to make criminal threats (§§ 664, 422). In 2003, the trial court sentenced him to a term of 25 years to life in prison pursuant to the Three Strikes law. (§§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d).) This court affirmed his conviction in 2004. (*People v. Moore* (May 26, 2004, B166329) [nonpub. opn.]²)

On January 31, 2020, Moore, acting in propria persona, filed a motion in the trial court requesting that he be resentenced in light of passage of Assembly Bill No. 1618 (2019–2020 Reg. Sess.) (Assembly Bill 1618). On February 13, 2020, the trial court denied the motion. Moore filed a timely notice of appeal, and we appointed counsel to represent him.

On July 28, 2020, appointed counsel filed a brief in which he raised no issues and requested that we follow the procedures set forth in *People v. Serrano, supra*, 211 Cal.App.4th 496. We notified appellant that he could submit a letter or supplemental brief stating any grounds for appeal, arguments, or contentions

¹ All further undesignated statutory references are to the Penal Code.

² We take judicial notice of our 2004 opinion in this matter. (Evid. Code, §§ 452, subd. (d), 459.)

that he wished this court to consider. On August 31, 2020, appellant submitted a supplemental brief.

DISCUSSION

Because Moore has filed a supplemental brief, we do not dismiss the appeal as abandoned but instead consider his contentions. (See *People v. Cole* (2020) 52 Cal.App.5th 1023, 1039–1040, review granted October 14, 2020, S264278.)

Assembly Bill 1618 added section 1016.8, which codified our Supreme Court’s holding in *Doe v. Harris* (2013) 57 Cal.4th 64. *Doe* held that the fact the parties have entered into a plea agreement does not insulate them from future changes in the law that are intended to have retroactive effect. (*People v. Stamps* (2020) 9 Cal.5th 685, 704–705.) Section 1016.8 also “clarified that any ‘provision of a plea bargain that requires a defendant to generally waive future benefits of legislative enactments, initiatives, appellate decisions, or other changes in the law that may retroactively apply after the date of the plea is void as against public policy’ (§ 1016.8, subd. (b)).” (*People v. Stamps*, at p. 705.) Section 1016.8 also states that a plea bargain requiring such a waiver is not knowing and intelligent. (§ 1016.8, subd. (a)(4).)

Moore stated in his motion that in 1982 he pled guilty to violation of section 245, former subdivision (a), as part of a plea bargain, but did not agree that the conviction could be used to enhance any future sentence. Therefore, he argues, use of the 1982 conviction to enhance his current sentence was improper under Assembly Bill 1618.

Moore is incorrect. Our 2004 opinion in this matter indicates that Moore’s Three Strikes sentence was premised on two prior robbery convictions, not the 1982 section 245 conviction.

Therefore, the fact he pled guilty to the section 245 conviction appears irrelevant to his Three Strikes sentence.

Even assuming *arguendo* that the trial court treated the section 245 conviction as one of the strikes, section 1016.8 has no impact on Moore's sentence for several reasons. Nothing in the record before us shows that Moore's 1982 plea agreement required him to waive the future benefits of retroactive changes in the law. Nor does Moore identify any ameliorative amendment that might have benefitted him. Section 1016.8 does not state that a plea is involuntary when a defendant is not advised of its potential future consequences. In any event, the record does not show what advisements Moore was given when he pled in 1982. And, the fact the Three Strikes law was enacted after his plea does not preclude its application to him. (See *Doe v. Harris*, *supra*, 57 Cal.4th at p. 66 ["That the parties enter into a plea agreement . . . does not have the effect of insulating them from changes in the law that the Legislature has intended to apply to them."].)

Even if section 1016.8 could somehow apply to Moore, he would not be entitled to any ameliorative benefit because his convictions have been final for years. (See *In re Estrada* (1965) 63 Cal.2d 740, 745; *People v. Hargis* (2019) 33 Cal.App.5th 199, 209.) For the same reason, to the extent Moore asserts a nonspecific due process claim, argues that his attorney in the 1982 plea proceeding was ineffective, and contends that his plea was not knowing and voluntary under *Boykin v. Alabama* (1969) 395 U.S. 238, these claims cannot be raised at this juncture.

We are satisfied that Moore's attorney has fulfilled his responsibilities and conclude the appeal raises no arguable issues.

DISPOSITION

The order is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.